

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPERIOR COURT
CIVIL ACTION
NO.

04-0179

MANUEL ROSA
Plaintiff,

V.

COMPLAINT

CITY OF BOSTON
Defendant,

THE PARTIES

1. The plaintiff, Manuel Rosa, is a resident of 523 Geneva Avenue, Dorchester, County of Suffolk, Commonwealth of Massachusetts.
2. The defendant, City of Boston, at all times herein mentioned was a municipality duly organized and existing under the laws of the Commonwealth of Massachusetts and is a public employer within the meaning of Mass. General Laws ch. 258 § 1, 2, and 9.

FACTS

3. In January 1993, the plaintiff's license and other forms of identification, were either lost or stolen from his possession.
4. On April 1, 1993, indictments were returned by a Suffolk County Grand Jury against an individual using the identification of the plaintiff Manuel Rosa. The indictments alleged distribution of Class A and B and conspiracy to violate the Controlled Substance Act.

5. Prior to which, the individual utilizing the plaintiff Manuel Rosa's identification was arrested by the Boston Police, booked, photographed and fingerprinted. He was subsequently arraigned in the Dorchester District Court and later defaulted at a subsequent hearing.
6. On March 10, 1997, the plaintiff Manuel Rosa was arrested by members of the Boston Police, held overnight in custody, and brought to the Suffolk Superior Court on March 11, 1997, whereby the Court determined that the individual before the Court was not the individual who was subject to the indictments and ordered his immediate discharge and release.
7. During the plaintiff Manuel Rosa's arrest on March 10, 1997, the Boston Police, without cause or explanation, replaced the photograph of the arrested individual with the photograph of Manuel Rosa.
8. On March 23, 1997, Manuel Rosa was again arrested by the Boston Police, held in custody overnight, brought before the Suffolk Superior Court whereby the Court again indicated that the plaintiff Manuel Rosa is not the subject of the indictments and again the Court ordered his immediate discharge and release.
9. Subsequent to March 23, 1997, Manuel Rosa was again arrested by members of the Boston Police on a warrant, held in custody, brought to the Dorchester District Court whereby again he is released as a result of the aforementioned.
10. On January 17, 2001, the plaintiff Manuel Rosa is again arrested for the fourth time by members of the Boston Police Department. He is again handcuffed, taken from his home in front of his parents and escorted in public, where his 'unjust arrest' is again witnessed by his neighbors and friends.
11. On January 18, 2001, the plaintiff Manuel Rosa is again brought before the Suffolk Superior Court, whereby legal counsel is appointed to represent him, he is again discharged after the Court again determines that he is not the individual who is the subject of the indictments.

12. On February 21, 2001, a hearing was held before an Associate Justice of the Superior Court upon a motion by Manuel Rosa's attorney to expunge any and all Boston Police records, including photographs, probation records, etc. arising from the 'arrests' of the plaintiff. The Motion was immediately acted upon and allowed by the Court
13. As a result of the gross negligence and/or deliberate indifference in maintaining proper and accurate records, and the complete failure to follow proper police procedures, the defendant, City of Boston, its agents, servants and/or employees, including unnamed members of the Boston Police Department, caused the plaintiff, Manuel Rosa, to suffer severe and permanent personal injuries.
14. Separate and apart from the above, at all material times the defendant, City of Boston, its agents, servants and/or employees, including unnamed members of the Boston Police Department, were acting under color of state law and said conduct deprived the plaintiff, Manuel Rosa, of a right, privilege, or immunity secured by the Constitution and the laws of the United States and the Constitution of Massachusetts.
15. As a result of the injuries sustained as aforesaid, the plaintiff, Manuel Rosa, has suffered great pain of body and anguish of mind.
16. The plaintiff, Manuel Rosa, has complied with M.G.L. Chapter 258, Section 4, and all other prerequisites and/or notice requirements of any kind or type as provided by the laws of the Commonwealth of Massachusetts.

CAUSES OF ACTION

(Each Cause of Action specifically incorporates by reference all of those paragraphs previously set forth)

FIRST CAUSE OF ACTION

17. This is Cause of Action by the plaintiff, Manuel Rosa, against the defendant, City of Boston, for violation of the rights, privileges and/or immunities protected under 42 U.S.C. §1983.

SECOND CAUSE OF ACTION

18. This is Cause of Action by the plaintiff, Manuel Rosa, against the defendant, City of Boston, for violation of the rights, privileges and/or immunities protected under the Massachusetts Civil Rights Act.

THIRD CAUSE OF ACTION

19. This is Cause of Action by the plaintiff, Manuel Rosa, against the defendant, City of Boston, for unjust imprisonment.

FOURTH CAUSE OF ACTION

20. This is Cause of Action by the plaintiff, Manuel Rosa, against the defendant, City of Boston, for negligent emotional distress.

FIFTH CAUSE OF ACTION

21. This is Cause of Action by the plaintiff, Manuel Rosa, against the defendant, City of Boston, for unjust arrest.

SIXTH CAUSE OF ACTION

22. This is Cause of Action by the plaintiff, Manuel Rosa, against the defendant, City of Boston, for violation of the Massachusetts Tort Claim Act.

DEMANDS FOR RELIEF

- A. As to the First Cause of Action, the plaintiff, Manuel Rosa, demands judgment against the defendant, City of Boston, in the amount of his damages, together with punitive damages and the costs and attorney's fees of this action.
- B. As to the Second Cause of Action, the plaintiff, Manuel Rosa, demands judgment against the defendant, City of Boston, in the amount of his damages, together with punitive damages and the costs and attorney's fees of this action.
- C. As to the Third Cause of Action, the plaintiff, Manuel Rosa, demands judgment against the defendant, City of Boston, in the amount of his damages, and the costs and attorney's fees of this action.
- D. As to the Fourth Cause of Action, the plaintiff, Manuel Rosa, demands judgment against the defendant, City of Boston, in the amount of his damages, and the costs and attorney's fees of this action.
- E. As to the Fifth Cause of Action, the plaintiff, Manuel Rosa, demands judgment against the defendant, City of Boston, in the amount of his damages, and the costs and attorney's fees of this action.
- F. As to the Sixth Cause of Action, the plaintiff, Manuel Rosa, demands judgment against the defendant, City of Boston, in the amount of his damages, and the costs and attorney's fees of this action.

JURY CLAIM

The Plaintiff Claims trial by jury

The Plaintiff,
Manuel Rosa
by his attorney,

Arthur L. Kelly, Esq.
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